

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

LORENZO BURNS, Register No. 1015445,)	
)	
Plaintiff,)	
)	
v.)	No. 05-4117-CV-C-SOW
)	
DAVE DORMIRE, et al.,)	
)	
Defendants.)	

ORDER

On December 12, 2005, the United States Magistrate Judge recommended that defendants' motion for judgment on the pleadings be granted, in part, and denied, in part. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C). Defendants Gallaway and Wilhite filed exceptions to the recommendation, and plaintiff Burns responded to the exceptions.

A review of the record convinces the court that the recommendation of the Magistrate Judge is correct and should be adopted. Defendants' exceptions assert plaintiff has not shown he was deprived of any of life's necessities and plaintiff has not alleged defendants had the required state of mind.

While plaintiff's claims may not withstand a motion for summary judgment submitted with supporting documents, plaintiff has minimally asserted he was knowingly confined to an unsafe cell and that defendants failed to take any action to correct the problem when it was repeatedly brought to their attention. If a motion for summary judgment is filed, plaintiff will have to come forward with evidence to support his assertion that his cell was constitutionally inadequate and that defendants had the necessary state of mind to have caused him harm and violated plaintiff's constitutional rights.

IT IS, THEREFORE, ORDERED that defendants' motion of July 27, 2005, for judgment on the pleadings and to dismiss the claims against defendants Dormire and Wood is granted and against defendants Gallaway and Wilhite is denied [24].

/s/ Scott O. Wright

SCOTT O. WRIGHT
Senior United States District Judge

Dated: 2/7/2006
Kansas City, Missouri